In the High Court of Punjab and Haryana at Chandigarh

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Date of decision: 6.9.2006

Hindustan Anti Biotics Ltd. .. Petitioner

Versus

M/s City Agro Centre and another ..Respondents

Coram: Hon'ble Mr.Justice S.D.Anand

Present: Mr.A.K.Jain,Advocate
for the petitioner.
Mr.B.R.Mahajan,Advocate
for the respondents.

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S.D.ANAND,J.

This revision petition is directed against order dated 4.8.2004 vide which the learned Trial Court dismissed an application filed by the petitioner (defendant before the Trial Court-hereinafter referred to as the petitioner) under Section 8 of the Arbitration and Conciliation Act,1996(hereinafter referred to as the New Act) for the stay of the proceedings.

The respondent(Plaintiff before the Trial Court, hereinafter referred to as the respondent) had been appointed an agent by the petitioner and the terms and conditions governing the agency were contained in agreement dated 14.5.1999. The agency was terminated by the petitioner vide letter dated 6.3.2001.The respondent filed a suit for rendition of accounts.

Ex. parte proceedings were ordered against the petitioner by the Trial Court. Those proceedings were set aside. Instead of filing the written statement thereafter, the petitioner opted to file the impugned application under Section 8 of the New Act. Reliance, in support of the application, was placed upon clause 26 of the Agreement dated 14.5.1999. That clause is reproduced as under for facilitating appropriate appreciation of the controversy:-

“1to 25. xx xx xx xx xx

26. Should there by any dispute between the company and the agency in regard to or related to or arising out of this agreement, the party shall try to resolve the dispute in mutual trust & goodwill. In the event of such dispute or difference is not settled amicably by negotiation the same shall be referred to the Managing Director of the company as the sole arbitrator and the matter settled as per the rules of Indian Arbitration Act. The decision of the arbitrator shall be final and binding on both the parties. The arbitration proceedings shall be conducted at Pimpri, Pune 411018.

27. xx xx xx xx "

The application was opposed by the respondent on the plea that it (application) was not maintainable as the agency itself stood terminated and the impugned agreement did not subsist thereafter. Yet another plea was that the application was incompetent as the petitioner had already taken steps in the proceedings by seeking a number of adjournments for filing of written statement. There was also a plea that the application under Section 8 of new Act is not competent in a suit for rendition of accounts.

The learned Trial Court uphold all the objections by the respondents. In support of the last indicated plea, which too was upheld by the trial Court, reliance was placed on **Narinder Singh Randhawa and another Versus Hardial Singh Dhillon and others** (AIR 1985 Punjab and Haryana 41).

I have heard learned counsel for the parties and have perused the records.

Learned counsel for the petitioner argued that the impugned order deserves to be invalidated as it is based upon a premise which is unsustainable in toto qua the non-subsistence of the impugned agreement. The point made was that the mere termination of the agency cannot be said to have led to the termination of the impugned agreement itself.

I find force in the plea on behalf of the petitioner. By the very nature of things, the provision of an agreement of the indicated category would come

into play only in case of a controversy between the parties. If things are proceeding in a consensual manner and in accordance with the agreement, there would hardly be any occasion for any party to invoke the arbitration clause. The invocation of arbitration clause would be done only if the parties do not agree on a particular point to which the terms and conditions contained in the impugned agreement are relatable. There is, thus, no warrant for the proposition that the impugned agreement dated 14.5.1999 ceased to subsist on the termination of the impugned agency. The view of the learned trial Court in the context is invalidated.

There is also force in the plea of the learned counsel for the petitioner that the mere fact of certain adjournments having been sought for filing of written statement would not at all be relevant for non-suiting the petitioner in the matter of the impugned application because the relevant provision existed only in the old Arbitration Act, wherein the invocation of arbitration clause was barred if the applicant-party had taken any steps in the proceedings. The new Act does not contain any provision corresponding to Section 34 of the old Act. There also, the view of the learned trial Court cannot be sustained.

The invalidation of the reasoning adopted by the learned trial Court on the two counts aforementioned notwithstanding, the riddle for the petitioner does not get solved. The present was a suit filed by the respondent for rendition of accounts. A such like controversy has to be disposed of by the Court and not by the Arbitrator. It was authoritatively held by the Punjab and Haryana in **Narinder Singh Randhawa's** case(supra) that a question of rendition of account must be decided by the Civil Court and not by the arbitrator. In the case referred to above, the partnership between the parties had been dissolved and the partners joined issue about whether it was appropriate that the matter pertaining to rendition of accounts should be gone into by the arbitrator. There was indeed otherwise was an arbitration clause contained in that partnership deed. G.C. Mital,J (as his Lordship then was) recorded a categorical finding that such a matter(rendition of accounts) cannot be left to be gone into and decided by the arbitrator in pursuance to the arbitration clause contained in the partnership deed

and that it is for the Civil Court to decide a controversy about the rendition of accounts. No law taking a contrary view was cited before this Court. The plea raised on behalf of the petitioner shall stand negatived accordingly.

In view of the discussion recorded in the foregoing para, the petition is held to be devoid of merits and is ordered to be dismissed. The parties shall bear their own costs of the cause in the circumstances of the case .

September 6 ,2006 (S.D.ANAND)
nk JUDGE